

Agency Access and Use Agreement
for Participation in The Capital Wireless Information Net

UNIVERSITY OF MARYLAND
AND

City of Hyattsville Police Department, City of Hyattsville, Maryland

Name of Agency and Jurisdiction (DC, VA, MD)

I. PARTIES AND PURPOSE

This Agreement, effective as of the date of last signature below ("Effective Date"), is entered into by and between the University of Maryland, a public agency and instrumentality of the State of Maryland ("University") and the government agency identified above ("Agency").

The Capital Wireless Information Net ("CapWIN"), an unincorporated association of law enforcement agencies located in the State of Maryland, the District of Columbia and the Commonwealth of Virginia ("Enterprise Area"), is a regional interoperable communications project designed to enhance emergency and critical incident response communications by integrating transportation and public safety data systems between and among governmental agencies and their authorized users in the Enterprise Area. CapWIN is managed by the Center for Advanced Transportation Technology ("CATT") in the University's Department of Civil and Environmental Engineering. CATT is responsible for performing University responsibilities under this Agreement. The CapWIN board of directors establishes CapWIN membership categories and sets the corresponding annual membership fees.

This Agreement sets forth the terms and conditions under which Agency becomes a member of CapWIN with the right to access and use the CapWIN System (defined below). In consideration of the mutual promises set forth herein, the parties hereby agree as follows.

II. THE CAPWIN SYSTEM

The CapWIN System is a multi-state, inter-jurisdictional, inter-operable wireless mobile data system that facilitates the secure sharing of data resources among participating transportation and public safety agencies located in the Enterprise Area. CapWIN implements the CapWIN System by providing mobile computing and data computing capabilities and incident management support functions through a message hub and global directory that links to select law enforcement agency databases in the Enterprise Area through a common CapWIN System interface. Through the System, authorized Agency users obtain mobile access, including direct mobile-to-mobile, base-to-base, mobile-to-base and base-to-mobile communications, to law enforcement and public safety agencies databases across geographical, jurisdictional and agency boundaries.

III. MEMBERSHIP

- A. To become a member of CapWIN, Agency shall submit a signed copy of this Agreement, a completed Membership Form (Attachment 1) and payment of the applicable annual Membership Fee to University. The current types of CapWIN membership and the related

annual membership fees are set forth in Exhibit A--the Membership Fee Rate Schedule.

- B. Initial deployment of CapWIN software is not contingent upon payment of the annual Membership Fee. Deployment may occur at any time once required training has been completed and Agency has met its duties under Section V.B. However, continued access to the CapWIN system after the first year of membership is contingent on payment of the applicable membership fee.
- C. If Agency's first year of membership does not coincide with the start of its fiscal year, Agency must guarantee that it will have sufficient funds to pay for a second year of membership and will purchase a second year of membership.
- D. If Agency has selected Basic Plus CapWIN Membership, it must confirm with the University prior to the beginning of each fiscal year the number of devices it wishes to run the CapWIN software so University may appropriately invoice Agency.
- E. For each fiscal year following Agency's initial membership year, Agency will issue payment within thirty (30) days of its receipt of an invoice by check payable to "UNIVERSITY OF MARYLAND" and mailed to CapWIN Executive Director at the address set forth in Section IX.A below or by RSTARS or credit card.

IV. ACCESS TO LAW ENFORCEMENT SYSTEM DATABASES

- A. Agency shall enter into a separate written agreement with the law enforcement system ("LES") that owns or controls the particular database in the Agency's jurisdiction.
- B. CapWIN will provide a link from CapWIN to enable Agency users to access the Databases for which they have met the authentication and authorization requirements provided Agency has also accepted any additional terms CapWIN may have imposed including, for example, terms of a LES Database Access Agreement.
- C. Before Agency or its authorized users can access the CapWIN System, Agency must:
 - 1. Meet all CapWIN System connection and participation requirements;
 - 2. Coordinate through its Criminal Justice Information Services (CJIS)) Systems Agency (CSA) and receive all approvals, authentications and/or authorizations (including mobile operator certifications and configurations) from the state and/or federal agencies responsible for Databases or their content;
 - 3. Ensure it has implemented protocols that limit access to the CapWIN System and Databases to authorized users at the Agency. Users shall not be considered authorized until they have satisfied Agency and LES requirements to access local databases and complied with CapWIN authentication and authorization requirements. Users will receive access to Databases consistent with the level of access authorized by the Agency or LES and agreed to by CapWIN;
 - 4. Ensure all proposed users have met all procedural requirements, terms and conditions, including training; and
 - 5. Have filed, authorized and executed all relevant certifications.

V. GENERAL RESPONSIBILITIES

A. CAPWIN

- 1. CapWIN will establish, maintain and operate, in its sole discretion, the infrastructure for the CapWIN System.

2. CapWIN will provide mobile client software that is suitable for installation on most mobile devices.
3. CapWIN will inform Agency of the minimum specifications that are necessary for fixed and mobile user equipment and agency operating software and network connectivity, as applicable. Such specifications are subject to change in CapWIN's discretion.
4. CapWIN shall be responsible for establishing, coordinating and modifying, in its discretion, all policies, procedures, terms and conditions, and other standards regarding the use and operation of the CapWIN System (collectively "SOPs").
5. CapWIN is responsible for system design, operating capabilities and other functions of the CapWIN System. CapWIN will decide, in its sole discretion, when to make changes to system capabilities, functionality or data sources available to Agency and whether to condition access on additional terms or conditions.
6. CapWIN will provide training for designated Agency administrators and will provide training for end users on an as needed basis. CapWIN may, in its discretion, require the Agency or its users to participate in additional training in light of modifications in the CapWIN System.
7. CapWIN agrees to provide 24/7/365 help desk support for CapWIN software. The level of such support to be determined by CapWIN in its sole discretion.
10. CapWIN reserves the right to interrupt, suspend or reduce access to and/or use of the CapWIN System or any Databases by Agency or any other person or entity when CapWIN determines such action is necessary.
11. CapWIN shall promptly notify Agency of any known or suspected breach of security or unauthorized access to or use of the CapWIN System and/or Databases that could affect Agency.
12. CapWIN shall comply with all applicable federal or state laws governing the transmission of sensitive information via wireless networks.
13. CapWIN will use reasonable efforts to notify Agency in advance of changes in specifications (IV.A.3) and protocols (IV.A.4), service interruptions (I.A.10) and/or security events (IV.A.11) when it is possible and practicable.

B. AGENCY

1. Agency shall purchase, install and maintain, at its own risk and expense, all fixed and mobile user equipment and operating software required to access and use the CapWIN System. All such equipment and software must meet or exceed the minimum specifications established by CapWIN.
2. Agency shall be solely responsible for providing and maintaining, at its own risk and expense, all network connections (wired and/or wireless) required to establish and maintain connectivity to the CapWIN System provided that all such connections shall be subject to CapWIN review and approval which CapWIN may deny for any connection it determines is inconsistent with the objectives or successful operation of the CapWIN System.
3. Agency shall pay any additional expenses incurred by CapWIN to satisfy Agency-specific requirements (such as unique Records Management Systems (RMS) data) promptly upon receipt of invoice.
4. Agency shall be responsible for establishing, implementing and maintaining its own access security, including security of user identification, passwords, and protecting against unauthorized use of or access to other confidential information related to use of the CapWIN System.
5. Agency will only enter into the CapWIN System the names of Agency personnel Agency has

authenticated and authorized to access the CapWIN System and their role(s) and level(s) of authorization.

6. Agency shall promptly notify CapWIN of any known or suspected breach of security, unauthorized access to or use of the CapWIN System and/or any Databases and/or of known challenge to the security of Agency that affects the CapWIN System.
7. Agency shall comply with and shall require its users to comply with SOPS and all applicable federal and/or state laws regarding access to Databases and the transmission of sensitive information via a wireless network, security and/or confidentiality.

VI. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITY

- A. THE CAPWIN SYSTEM, CAPWIN SOFTWARE, DATABASES, AND ANY RELATED GUIDANCE, TRAINING, INFORMATION, MATERIALS AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." UNIVERSITY ON BEHALF OF ITSELF AND CAPWIN HEREBY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN FACT OR BY OPERATION OF LAW, INCLUDING, WITHOUT LIMITATION, THOSE OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. UNIVERSITY ON BEHALF OF ITSELF AND CAPWIN FURTHER DISCLAIMS THAT THE CAPWIN SYSTEM, CAPWIN SOFTWARE, AND DATABASES WILL OPERATE WITHOUT INTERRUPTION, BE ERROR FREE OR MEET ANY AGENCY REQUIREMENTS INCLUDING, BY WAY OF EXAMPLE, REQUIREMENTS RELATED TO QUALITY, SECURITY, ACCURACY OR COMPLETENESS.
- B. AGENCY USES AND ACCESSES THE CAPWIN SYSTEM, CAPWIN SOFTWARE AND RELATED MATERIALS, INFORMATION, SERVICES AND DATABASES AT ITS OWN RISK AND HEREBY RELEASES AND COVENANTS NOT TO SUE THE STATE OF MARYLAND, THE UNIVERSITY SYSTEM OF MARYLAND, UNIVERSITY, CAPWIN AND/OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS, AGENTS OR STUDENTS ON ANY GROUNDS RELATED TO OR ARISING OUT OF USE OF THE CAPWIN SYSTEM, CAPWIN SOFTWARE, OR RELATED MATERIALS, SERVICES, INFORMATION OR DATABASES BY AGENCY OR ITS AUTHORIZED USERS.
- C. IN NO EVENT SHALL UNIVERSITY FOR ITSELF AND OR ON BEHALF OF CAPWIN BE LIABLE TO AGENCY OR THIRD PARTIES FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND, INCLUDING LOSS OF BUSINESS OR DOWN TIME REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY MIGHT ARISE AND REGARDLESS OF WHETHER THEY HAVE BEEN ADVISED OF OR FORESAW THE POSSIBILITY OF SUCH DAMAGES.

VII. TERM, TERMINATION

- A. This Agreement shall commence on the Effective Date and shall expire five (5) years thereafter ("Term").
 - B. The parties may renew or extend this Agreement by mutual written agreement.
 - C. Either party may terminate this Agreement for cause or no cause by providing at least thirty (30) days prior written notice of termination to the other party. Termination shall become effective as of the date specified in the notice.
1. If University issues notice of termination to Agency other than for cause after Agency has paid its membership fee for the current or upcoming membership year, Agency shall be entitled to a pro-rata refund for the unused portion of the membership year for which payment was issued.

2. If Agency fails to issue timely payment of its membership fee, University may terminate this Agreement upon Agency's failure to issue payment along with any late payment charge with thirty (30) days of its receipt of notice of late payment.
3. If University issues notice of termination for cause other than non-payment of the membership fee and Agency fails to cure its breach within thirty (30) days following receipt of notice, Agency shall not be entitled to any refund of the membership fee.

VIII. REPRESENTATIONS

- A. Agency represents that it is a public safety agency located within the Enterprise Area that is eligible to participate in CapWIN under the terms and conditions of this Agreement.
- B. If execution of this Agreement commences after Agency's initial deployment of the CapWIN System and the Effective Date does not coincide with the start of Agency's fiscal year, Agency hereby represents and warrants that it will ensure it has sufficient funds to pay for and will purchase a second year of membership.
- C. University represents that the individual signing this Agreement below is authorized to do so.

IX. NOTICES AND POINTS OF CONTACT

- A. Each party shall designate an individual to serve as its primary Point of Contact (POC) on all matters related to this Agreement. Agency's initial contact shall be the individual identified in the completed CapWIN Membership Form. A party may change its POC by written notice issued under this Article IX to the other party. University's address and POC is

CapWIN Executive Director
CapWIN
University of Maryland
5000 College Ave., Suite 3121
College Park, MD 20742
Telephone: (301) 405-9840
E-mail: rmoscocso@capwin.org
Facsimile: (301) 405-1155

- B. Notices *required* to be made under this Agreement shall be effective upon receipt by the designated POC if delivered 1) in person, 2) by overnight courier with documentation of delivery, 3) by facsimile with documentation of transmission, followed up by first class mail, postage prepaid, or 4) by certified or registered mail, return receipt requested. Notices not required to be made under this Agreement may be issued by e-mail.

X. GENERAL

- A. Except as otherwise provided herein, this Agreement, including the CapWIN Membership Form, may only be modified or amended by written agreement of authorized representatives of each party.
- B. Both parties agree that, in the event of a dispute between the parties, University and Agency will use reasonable, good faith efforts to attempt to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding, alternative dispute resolution that are mutually acceptable to the parties.

- C. Neither party shall be in default of this Agreement if its failure to perform hereunder is caused by supervening conditions beyond the party's control, including acts of God, civil unrest, strikes, labor disputes, governmental demands or requirements, or a service interruption from an underlying carrier or service provider provided the party affected by the event shall promptly notify the other party of the event and its expected duration.
- D. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party.
- E. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Maryland without regard to its conflict of laws principles. The parties mutually agree to opt out of application of the Maryland Uniform Computer Information Transactions Act, MD. CODE ANN. [COMMERCIAL LAW] 21-101 through 21-816, except to the extent that section 21-104(2) of the Act applies.
- F. If any provision in this Agreement is held to be unenforceable, that provision shall be construed as nearly as possible to reflect the original intent of the parties and the remaining provisions shall remain in full force and effect.
- G. The relationship between the parties is that of independent contractors. Nothing contained herein shall be deemed to create an agency, joint venture, franchise or legal partnership by or between the parties.
- H. This Agreement, together with Exhibit A and the completed CapWIN Membership Form, constitutes the entire understanding and agreement between the parties regarding the subject matter herein. There are no understandings or agreements that are not contained herein. In the event either party requires the use of a purchase order or similar document to effect payment or a binding agreement between the parties, any terms associated with such purchase order or similar document are hereby rejected and null and void.
- I. This Agreement may be executed in counterparts that, when taken together, shall constitute one and the same agreement. The parties agree to accept electronic delivery of the signed Agreement.

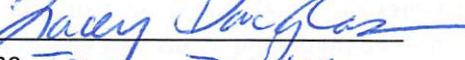
ACCEPTED AND AGREED TO:

UNIVERSITY OF MARYLAND
On behalf of itself and the Capital
Wireless Information Net (CapWIN)

By: 
Rodrigo Moscoso
CapWIN Executive Director

5-3-22
Date

AGENCY
City of Hyattsville Police Department

By: 
Name Tracy Douglas
Title City Administrator

5/2/22
Date